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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

July 3, 2001

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EX PARTE OR LATE FILED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EX PARTE -- CC Docket No. 01-138 / Application of Verizon Pursuant to
Section 271 of the Telecommunications Act of 1996 to Provide InterLATA
Service in Pennsylvania

Dear Ms Salas:

Today Carl Giesy, Michael Pelcovits, Mark Schneider and I on behalf of WorldCom, Inc. met with Rich Lerner, Rob Tanner, Aaron Goldschmidt, Visha Vachachina, and Laura Tils of the Common Carrier Bureau to discuss Verizon's 271 application to provide long distance service in Pennsylvania. In particular, we discussed pricing and TELRIC issues relating to both loops and switches, and discussed the attached portion of the Global Settlement decision.

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and one copy of this Notice are being filed with your office.

Sincerely,



Keith L. Seat

Attachment

cc: Rich Lerner, Rob Tanner, Aaron Goldschmidt, Visha Vachachina, Laura Tils
James J. McNulty (PUC), Kelly Trainor (DOJ), Ann Berkowitz (by fax)

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Question 2: What charges will CLECs have to pay to lease UNEs?

MCIW presented testimony by Mr. Donald Laub, which the Commission finds persuasive. Laub testified that in general Total Element Long Run Incremental Cost (TELRIC)-based rates fully compensate the incumbent for its investment and for any related overhead.⁴⁷ Furthermore, if UNEs prices are set at TELRIC-based rates, the ILEC cannot use the difference between TELRIC and the UNE rate to strategically underprice new entrants or to otherwise unfairly raise their rival's costs.⁴⁸ The empirical evidence indicates that the existing rates in Pennsylvania are not set at the TELRIC level. The rates for unbundled loops and local switching in Pennsylvania (including the switch port and switching per minute rate elements) are far in excess of rates that exist in other states and the FCC's Proxy Rates.⁴⁹

Furthermore, new evidence adduced in this docket undercuts a critical assumption relating to loop costs from the MFS III Order. In the MFS III decision, the Commission adopted the BA-PA loop cost model. The loop cost model assumed a forward looking network based on Next Generation Digital Loop Carrier systems (NGDLC).⁵⁰ Having made that assumption, BA-PA then made a critical second assumption, namely that:

The prices Bell expects to pay for NGDLC systems will be comparable to that Bell now pays for IDLC and [Integrated Digital Loop Carrier].... Accordingly, Bell has assumed its future costs [will be] between the

47 MCIW 1.0 (Laub Direct), pp. 46-47.
48 MCIW 1.0, (Laub Direct), pp. 46-47.
49 MCIW 1.0 (Laub Direct), p. 48.
50 MFS III Order, p. 50.

existing UDLC [Universal Digital Loop Carrier] and IDLC costs.⁵¹

We subsequently adopted BA's position.⁵²

Whatever validity existed in 1997 for BA-PA's assumption that NGDLC would cost about as much as existing Integrated Digital Loop Carrier (IDLC) and Universal Digital Loop Carrier (UDLC), we find that assumption is no longer true. BA-PA's own documents demonstrate that. Attachment 3 to Mr. Laub's Rebuttal testimony is a BA-PA document regarding the implementation of NGDLC and the relative costs of NGDLC as compared to IDLC.⁵³ That document, which we find credible, demonstrates that in all instances NGDLC is significantly less expensive than either UDLC or IDLC.⁵⁴ This evidence, *inter alia*, indicates to us that this is a declining cost industry⁵⁵ and therefore BA-PA's loop and switching costs need to be reexamined.⁵⁶

Only MCIW produced an UNE cost study in this proceeding. Specifically, MCIW presented the testimony of Mr. John C. Klick that provided recommended pricing for basic UNEs and of Mr. Laub that discussed pricing of xDSL-capable and xDSL-equipped loops. The prices suggested by Mr. Klick were derived from the HAI Model, Version 5.1.⁵⁷ Because this proceeding did not

⁵¹ MFS III Order, p. 50 (describing BA-PA's position).

⁵² MFS III Order, p. 70.

⁵³ The document discusses DLC with GR303 technology (NGDLC).

⁵⁴ See, e.g., MCIW 1.1 (Laub Rebuttal), Attachment 3, page 11.

⁵⁵ Tr. at 726-727.

⁵⁶ GR303 technology (NGDLC) also reduces switching costs. See MCIW 1.1 (Laub Rebuttal) Attachment 4, p. 12.

⁵⁷ The model is named after HAI Consulting, Inc. which originally developed the Hatfield/HAI Model on behalf of AT&T and MCI Telecommunications Corporation to produce estimates of the Total Service Long Range Incremental Cost of basic local telephone service as part of an examination of the cost of universal service. Klick Direct Testimony, Attachment 2. Appendix A, p. 1.

provide for a complete examination of this cost model, we will not adopt it as the definitive cost model for Pennsylvania ratemaking at this time. However, the rates produced by the HAI, which has received considerable review and examination at the FCC and other states, were significantly less than the rates presently included in Tariff 216. This also strongly suggests that the current rates are too high.

Question 3: How can UNEs be combined and connected to CLECs networks?

When it comes to the method of combining elements, the rule of nondiscrimination must apply. Whatever means, whether manual or electronic, that BA-PA uses to combine elements for itself and its end users should be made available to CLECs. This issue will be discussed more fully in the UNE Platform and EELs section of this Order. Our position here is complimentary to our position on Interconnection discussed in Section VI of this Order, and it should be implemented in conjunction with those determinations.

C. Discussion and Resolution of Issues

1. UNE Loop for Residential and Business Customers

In its petition, BA-PA proposed new unbundled loop rates but did not support the proposed rates with any record evidence. BA-PA asserts that since the MFS III rates are TELRIC-based, then its proposed new rates, which are lower, must also be TELRIC-based. That is simply not correct. As noted above, the record indicates that the telecommunications industry is a declining cost industry. BA-PA has provided no evidence upon which we can determine that its proposed rates, although lower than present rates, have kept pace with that decline. Moreover, despite our express intention to reexamine existing rates, BA-PA has

failed to address any changes that may have occurred which would address the magnitude of rate reductions necessary. We have previously noted that the loop cost studies in MFS III were based on the incorrect assumption that the costs of NGDLC would be roughly equivalent to the average of the costs of IDLC and UDLC. In fact, the costs of NGDLC, which BA-PA models, are significantly lower than either IDLC or UDLC.⁵⁸ We have already acknowledged the need to re-examine the UNE prices that resulted from its order in MFS III, unfortunately, BA-PA has not provided us with the necessary basis upon which to find that its proposed rates are appropriate.

Mr. Klick calculated the TELRIC rate for unbundled loops for the four cells in BA-PA territory using the HAI Version 5.1 model. Those resulting HAI Version 5.1 rates as compared to those POTS 2-wire UNE loop rates in the 1648 and 1649 Petitions after FCC 271 approval are as follows:

| <u>Density Cell</u> | <u>HAI Version 5.1 Monthly Recurring Loop Rate</u> | <u>1648 Petition</u> | <u>1649 Petition</u> |
|---------------------|--|--------------------------|--------------------------|
| 1 | \$ 3.59 | \$10.25 | \$10.25 |
| 2 | \$ 7.03 | \$11.00 | \$11.00 |
| 3 | \$ 8.72 | \$14.00 | \$14.00 |
| 4 | \$16.73 | \$17.50 | \$17.50 |
| Average | \$10.09 | \$14.01 | \$14.01 |

We are not persuaded to rely entirely upon the HAI 5.1 model to determine UNE rates, as we have some criticism of the model. Although we appreciate that the HAI 5.1 Model is a forward-looking cost model, which takes into consideration anticipated changes in doing business through the year 2003, the

⁵⁸ See, MCIW 11 (Laub Rebuttal), Attachment 3, page 11.

number of inputs (over 1400 user-definable values according to paragraph 6.1.4 of Attachment JCK-2) contained in the model makes it difficult to determine the reasonableness of each one. We were only able to find approximately 360 inputs of the referenced 1400 inputs stated by Mr. Klick. (Appendix B of Attachment JCK-2). Based on our limited understanding of the HAI 5.1 Model and its products we are reluctant to rely on it for establishing replacement rates for those adopted in MFS III.

During the course of MFS III, we used the BA-PA cost model and examined the inputs used for that model, based upon the record developed in that proceeding. A series of "scenarios" was developed, each scenario based upon different adjustments to inputs such as cost of capital and fill factor. In reaching our determination in MFS III, we necessarily made determinations regarding the inputs used in the model and, based upon the scenarios developed in that proceeding, we were able to derive the rates which resulted from the input determinations. After notice and hearing on those scenarios, we entered an Order on August 7, 1997, which adopted inputs and committed to the reexamination of BA-PA's unbundled rates one-year later.

Given the record before us in this proceeding, we have decided to reconsider our determinations regarding several of the model inputs that were fully developed during MFS III and will modify our conclusions consistent with those variable inputs that were used to derive "Scenario Number 9" which was submitted May 19, 1997. The specific assumptions that we reconsider here to reach this determination are the cost of capital and fill factors. In MFS III, we adopted a cost of capital of 11.9 percent. (MFS III Order entered April 10, 1997 at 40). The fill factor used was 70 percent. (MFS III Order entered April 10, 1997 at 73).

The issue of cost of capital was hotly contested in MFS III. We note that several of the parties argued that an appropriate figure was 9.83 percent. Moreover, BA-PA's parent company, Bell Atlantic had represented to the Securities and Exchange Commission, as well as its investors, that its actual cost of capital was between 8 percent and 10 percent at the time of the Bell Atlantic - NYNEX acquisition.⁵⁹ Given the serious legal liability that attaches to false or inaccurate proxy statements, we cannot discount these indications of a lower cost of capital. Given that interest rates have not increased significantly since that time, we are confident that the lower cost of capital advocated by the parties in MFS III would be appropriate for use as an input element for purposes of determining UNE rates. In fact, we note that in the most recent publicly available report prepared by the staff regarding the quarterly earnings of fixed public utilities, the market-based 52-week cost of equity capital for the Bell Regional Telephone Companies, which included BA-PA, is 9.81 percent.⁶⁰ Under the circumstances, we find that the use of an 11.9 percent cost of capital is no longer appropriate, and that use of the 9.83 percent cost of capital input within Scenario 9 is a more reasonable assumption at this time.

As with cost of capital, fill factor was another input decision that was aggressively contested in MFS III. It was argued during the appeal of MFS III that the model included internally inconsistent assumptions with respect to depreciation lives and fill factors. The depreciation life of a network element is simply the average time from when an element is deployed until it must be replaced. A shorter depreciation life results in higher cost per unit of time, as the cost of the

⁵⁹ AT&T Main Brief at A-310203F0002 at p. 18-21.

⁶⁰ PUC Bureau of Fixed Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities for the Period Ended March 31, 1999, p. 27.

element is spread over a shorter period. A fill factor is the ratio of facilities that are in use to facilities that are spare; for example, if 100 loops have been deployed but only sixty (60) are in use, the fill factor is 60 percent. A lower fill factor results in higher costs, because the cost of the spare facilities must be incorporated into the cost of those that are in use.

The pricing model inputs adopted by the Commission included acceptance of BA-PA's proposal to assume useful lives shorter than had been prescribed when setting rates for its facilities, but assumed low fill factors that reflect investment in enough facilities to last far longer than the assumed depreciation rates. Thus, BA-PA's model was permitted to use inconsistent assumptions for depreciation and fill factor with the result that the cost to be passed on to purchasers of unbundled network elements was inflated.

We do not consider our determination regarding the appropriate lives for electronic equipment to have been in error and this record suggests that our judgment on this point was correct. However, we now recognize the inconsistency that was inherent in our earlier determination regarding fill factors. The fill factor input variable that was used in the development of several of the scenarios filed May 20, 1997, in response to our April 25, 1997 Secretarial Letter in the MFS III proceeding,⁶¹ matched the fill factor that was used for fiber at 85 percent and represents a reasonable compromise between the arguments advanced for the use

⁶¹ In the April 25, 1997 Secretarial Letter we requested BA-PA to file with the Commission a more specific series of 14 different cost model computer runs using a combination of individual cost adjustments. The 14 different scenarios were incorporated in the MFS III proceeding by reference.

⁶² AT&T Main Brief at A-310203F0002 at p.18-21.

of either seventy (70) percent or ninety-one (91) percent, ~~each~~ of which is correlated with expectations with respect to the growth in the number of lines in service. The ninety-one (91) percent fill factor is derived from an estimated growth rate of only 1.9 percent whereas current experience and testimony indicates a growth rate of approximately three (3) percent. For these reasons, we have determined that it is appropriate to reconsider our determination of the fill factor and adjust that assumption to eighty-five (85) percent.

As further support for our decision to adopt the UNE rates associated with Scenario Number 9, the run which used inputs for cost of capital and fill factor that we adopt here, we note that both the 1648 and the 1649 Petitioners proposed to reduce the existing 2-wire loop rates from an existing statewide average of \$16.78 to \$14.01. We also note that the weighted statewide average loop rate in Scenario Number 9 is approximately \$14.04. Based upon the remarkable similarity between the weighted average loop rates proposed in the 1648 and 1649 Petitions and the results of Scenario 9, we rely on the record evidence to modify existing loop rates per Scenario 9.

We also note that the exercise of calculating the weighted loop rate is sensitive to the number of loops identified for each of the four (4) Density Cells and that the date of the Scenario 9 cost model run was May 1997. However, since the rates developed using Scenario 9 are based upon the most recent on-the-record information available to us, and we declined to use the HAI 5.1 Hatfield model as presented by MCIW in this proceeding, we are of the opinion that the schedule of rates produced under Scenario 9 are just and reasonable based upon the record before us.

We therefore conclude that the loop rates proposed at paragraph 15(a) of the 1648 Petition and paragraph 64 of the 1649 Petition, although not identical to the Scenario 9 Loop rates by Density Cell, are just and reasonable when the statewide average loop rates are taken into consideration. We shall also honor the 1649 Petitioner's request and phase-in the rates in two steps – the first phase of a 13.59% reduction is to be filed within 30 days of the date of entry of this Order and the second phase of an additional 2.918% reduction is to be filed upon FCC approval of BA-PA's Section 271 filing, but in no event later than one year from the date of entry of this Order. Therefore, within 30 days of the date of entry of this Order, we direct BA-PA to file a tariff supplement (Tariff Supplement 1) to its Tariff No. 216, to become effective on one day's notice, which reduces all UNE loops by 13.59%. Loop rates for ISDN, Customer Specified Signaling (2-Wire), Customer Specified Signaling (4-Wire), and DS1 shall also be reduced by 13.59% during the first phase-in. Specifically, BA-PA's 2-wire loop rates will be reduced to a statewide average rate of \$14.50 (a 13.59% reduction), using the following rates for each density cell:

| <u>Density Cell</u> | <u>Tariff Supplement 1 Rates</u> |
|---------------------|----------------------------------|
| 1 | From \$11.52 to \$10.65 |
| 2 | From \$12.71 to \$11.20 |
| 3 | From \$16.12 to \$14.75 |
| 4 | From \$23.11 to \$17.75 |
| Average | From \$16.78 to \$14.50 |

With regard to the second phase-in, we shall direct BA-PA to file a tariff supplement (Tariff Supplement 2) to its Tariff No. 216, upon the FCC approval of its Section 271 filing, but no later than one year from the effective date of the entry date of this Order, to become effective on one day's notice, which

further reduces its 2-Wire UNE Loop rates to a statewide average rate of \$14.01 (an additional 2.918% reduction), using the following rates for each density cell:

| <u>Density Cell</u> | <u>Tariff Supplement 2 Rates</u> |
|---------------------|----------------------------------|
| 1 | From \$10.65 to \$10.25 |
| 2 | From \$11.20 to \$11.00 |
| 3 | From \$14.75 to \$14.00 |
| 4 | From \$17.75 to \$17.50 |
| Average | From \$14.50 to \$14.01 |

Loop rates for ISDN, Customer Specified Signaling (2-Wire), Customer Specified Signaling (4-Wire), and DS1 shall also be reduced by an additional 2.918% during the second phase-in.

2. Basic Port Rates

The 1648 Petitioners propose a full-featured port rate, set at the current MFS-III rate of \$2.67 per month, and a rate similar to the style adopted in New York state, set at \$1.90 per month, which includes all features in the port except for four (i.e., 3-Way Calling, Centrex Intercom, Custom Ringing, and Calling Number Delivery Blocking), which would then be available separately.⁶³ BA-PA proposed to establish a port rate in its compliance filing using the MFS III assumption. BA-PA did not propose a specific rate during the course of this proceeding.

⁶³ Senators Petition, ¶15(b). The four (4) features that would be made available on a separate menu are 3-way calling (priced at 52 cents per month), custom ringing (16 cents per month), centrex intercom (45 cents per month) and calling number delivery blocking (priced at \$.002 per call).

The 1648 Petition's proposal recognizes the importance of the port to the development of local exchange competition and thus prices it at a reasonable rate. A CLEC seeking to provide competitive local exchange service through use of the UNE platform must lease a switch port from BA-PA,⁶⁴ and the cost of the port to the CLEC will have a decided impact on that CLEC's ability to economically provide that service.⁶⁵ Thus, ensuring that the port is available at a rate that permits the economic use of that element in the provision of competitive local exchange service, is fundamental to the 1648 Petition's port rate proposal.

The 1648 Petition's port rate proposal is based upon the New York Commission's conclusion that the charge for the switch port charge already includes all features and functionalities of the switch, except for those applications requiring specialized hardware.⁶⁸ This is clearly not the case with the 1649 Petition proposal, which indicates only that a rate will be developed using the reconsidered MFS-III assumptions. BA-PA purports to have not calculated, or even estimated, what the final port rate would be under the 1649 Petition's proposed methodology.⁶⁹ As BA-PA witness Whelan admitted on cross-

⁶⁴ Tr. 1236. Whelan testimony.

⁶⁵ Tr. 1237.

⁶⁶ AT&T St. 4.0, at 11.

⁶⁷ In its September 27, 1996 Order on Reconsideration in the Local Competition Docket, the FCC established a range for a default port rate of \$1.10 to \$2.00 per port per month, finding that it was consistent with rates that had been developed in several states "based, at least in part, on forward-looking costs." Order on Reconsideration, CC Docket No. 96-98, Sept. 27, 1996, ¶8. The full-featured port rate proposed in the Senators Petition obviously exceeds this proxy range.

⁶⁸ See Opinion No. 97-2, Opinion and Order Setting Rates for First Group of Network Elements, NY PSC Case 95-C-0657 et al., April 1, 1997, Attachment D at 1. See also AT&T St. 4.0, at 13.

⁶⁹ Tr. 1235-36. BA-PA witness Whelan was, to say the least, evasive on this point, stating initially that Bell "may" have performed such a calculation, but that he was not aware of it. Tr. 1235. As he subsequently admitted, however, BA-PA explicitly denied having made such a calculation in its discovery responses. Tr. 1235-36 (citing to BA-PA's response to AT&T's Set 2, No. 11).

examination, however, it was his "expectation" that the rate for the full-featured port would, in fact, exceed the current MFS-III rate of \$2.67 per month.⁷⁰

Using the MFS-III assumptions and methodology that BA-PA ~~asserts~~ it would use in the 1649 Petition, as well as the actual data from the MFS-III proceeding, AT&T witness Baranowski calculated that, under BA-PA's proposal, the rate for a switch port that properly includes all vertical features would be a rate that is several times the rate BA-PA currently is charging.⁷¹ Significantly, BA-PA did not attempt to rebut or otherwise contest this calculation.

We are of the opinion that BA-PA's port rate proposal would have an adverse impact on a CLEC's ability to make economic use of the port, especially as part of the UNE platform. The evidence in this case demonstrates that, with BA-PA's port rate proposal, the competitive situation would, if anything, be even worse than under MFS-III, especially for residential customers. We shall require BA-PA to incorporate the proposal set forth by the 1648 Petitioners into its Tariff No. 216. As we noted above in our loop rate determination, the declining cost status of the industry strongly suggests that the rate determined here should be less than current rates. Since this port offering includes all features, yet the rate is the same as that established in MFS III, the rate is effectively less.

⁷⁰ Tr. 1236.

⁷¹ AT&T St. 4.0, at 15. Mr. Baranowski's calculations, which have not been contested by Bell, are described fully at pages 14-15 of his testimony. Significantly, and as a point of comparison with this Bell rate, the FCC, in developing the port rate proxy range of \$1.10 to \$2.00, declined to rely on a \$6.00 monthly port rate that had been developed for GTE in Florida. Order on Reconsideration, CC Docket No. 96-98, Sept. 27, 1996, ¶8. This decision was based in part on the FCC's determination that the \$6.00 was "more than three times as large as any of the other rates set by state commissions with forward-looking cost studies available." Id.

For the foregoing reasons, we shall adopt the port rates specified in the 1648 Petition and direct BA-PA to include in its Tariff Supplement 1, within thirty (30) days of the date of entry of this Order, the following modifications with regard to the switch port, to become effective on one day's notice:

Local Switching Port

Option A:

Rate per port, per month * **\$2.67**

- * Shall include all Vertical Features that are currently included in the Originating and Terminating Local Switching rates.

Option B:

Rate per port, per month * **\$1.90**

- * Shall includes all features in the port except 3-Way Calling which will be priced individually at the prices below:

| | |
|--|----------------|
| 3-Way Calling, rate per month | \$0.52 |
| Centrex Intercom, rate per month | \$0.45 |
| Custom Ringing, rate per month | \$0.16 |
| Calling Number Delivery, rate per call | \$0.002 |

3. UNE Switch Rate Reductions

The Petitioners in the 1648 and 1649 Petitions both propose identical UNE switch rates. The proposed rates are \$0.001802 per minute of use for the originating local switching UNE and \$0.001615 per minute of use for terminating local switching UNE. Unlike the currently tariffed local switching rates, they do

not include any vertical features since those are now included in the flat monthly port charge.

We shall adopt the UNE switching rates specified in the 1648 Petition. Therefore, we shall direct BA-PA to incorporate the UNE switching rates into their Tariff No. 216 as follows:

Local Switching

| | |
|--------------------------------|------------|
| Originating, per minute of use | \$0.001802 |
| Terminating, per minute of use | \$0.001615 |

4. Other UNE Rates

BA-PA Tariff No. 216 currently contains all of the UNE rates authorized by our August 7, 1997 Order at MFS III at A-310203F0002 et al., as well as subsequent Orders which either added additional UNEs or modified existing UNEs.⁷² Each of the scenarios, including Scenario 9, submitted in response to the Commission's April 25, 1997 Secretarial Letter, contains a full set of compliance UNE rates comparable to the BA-PA Tariff No. 216 compliance

⁷² See, Pennsylvania Public Utility Commission v. Bell Atlantic-Pa., Inc., Docket No. R-00963759, (Order entered November 1, 1996); Pennsylvania Public Utility Commission v. Bell Atlantic-Pa., Inc., Docket No. R-00973942, (Orders entered April 10, 1997 and August 7, 1997); Pennsylvania Public Utility Commission v. Bell Atlantic-Pa., Inc., Docket No. R-00973951, (Order entered May 8, 1997); Application of MFS Intelenet of Pennsylvania, Inc., et al., Docket No. A-310203F0002, et al., (Order entered July 23, 1998); Pennsylvania Public Utility Commission v. Bell Atlantic-Pa., Inc., Docket No. R-00974178, (Order entered December 18, 1997); and Pennsylvania Public Utility Commission v. Bell Atlantic-Pa., Inc., Docket No. R-00984523, (Order entered December 17, 1998).

filing rates accepted by the Commission. As we previously ~~stated~~ in the discussion on UNE Loop rates for Residential and Business Customers, ~~we~~ have reconsidered two (2) model input variables which correspond to the model output results of Scenario 9 and found the results to be just and reasonable. ~~Therefore~~, having reconsidered the inputs that yielded Tariff No. 216, we ~~conclude~~ that the balance of the Tariff No. 216 output UNE rates to have been reconsidered as well. Therefore, we direct BA-PA to file an appropriate amendment to Tariff No. 216 which replaces all of the existing rates that have not otherwise been addressed in this proceeding. The schedule, derived from Scenario 9, and ~~previously~~ identified as Appendix A⁷³ to this Order, contains a summary of our conclusions regarding the rates for the amended Tariff Supplement 216. Rate ~~decreases~~ for these remaining UNEs will also be subject to the two-step phase-in (i.e., 13.59% reduction within thirty (30) days of the entry date of this Order and an additional 2.918% upon approval of BA-PA's Section 271 filing by the FCC, but in no event later than one (1) year from the effective date of the Commission's order in this matter). Due to their relatively small size, non-recurring rate ~~increases~~ will become effective with the first step.

Before concluding this section, we want to clarify here several of the provisions of the Tariff Supplement 216 amendment that relate to digital services which will be discussed in more detail in the Digital Tariffs and Other High Speed Technology Issues section of this Order. Two-wire ADSL capable loops are to be offered in the amended Tariff Supplement as UNEs and priced at the respective Density Cell 2-wire loop rates. Four-wire HDSL capable loops will also be offered in the amended Tariff Supplement as UNEs and priced at the respective

⁷³ For rates which were filed after the MFS III computer runs, the Attachment does not include a rate. Instead, it is indicated by the phrase "After Scen. 9."

Density Cell 4-wire loop rates. Further, the supplement to Tariff 216 will provide for the virtual collocation of dedicated DSLAMS, consistent with our conclusions regarding collocation at Section III elsewhere in this Order.

It is readily apparent to us that rapid changes in network architecture and technological innovation will result in an expanding demand for the identification of new or additional network elements. As such, it is prudent to anticipate those developments and provide a procedure to make such requests. Therefore, it will be our policy from hereon, to require carriers seeking new UNEs to first direct their attention to BA-PA by requesting in writing such access to new UNEs. If a satisfactory response from BA-PA is not received within ten (10) days of the receipt of the request, any requesting CLEC may petition the Commission requesting that such UNE(s) be offered. During this proceeding several carriers requested DS-3 loops. Our review of Tariff 216 reveals that several DS-3 related UNEs are tariffed but that DS-3 loops are not. In our opinion it would serve no purpose to ignore this request and subject it to this emerging policy process. BA-PA is therefore directed to provide for a DS-3 loop in when it files its supplement to Tariff Supplement 216. Furthermore, BA-PA shall establish the price for a DS-3 loop consistent with our reconsidered model input findings at MFS III and our loop finding herein.

Bell shall file an appropriate rate for these services based on the Scenario 9 computer run.